

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOHN DOE,

Petitioner/Judgment Creditor,

v.

EJERCITO DE LIBERACION NACIONAL
a/k/a ELN, a/k/a National Liberation Army,
and FUERZAS ARMADAS
REVOLUCIONARIOS DE COLOMBIA,
a/k/a FARC, a/k/a REVOLUTIONARY
ARMED FORCES OF COLOMBIA,

Defendants/Judgment Debtors, and

TAJCO A/K/A TAJCO LTD. A/K/A
TRADEX CO. LTD. AND OTHER ALIASES;
GOLFRATE HOLDINGS (ANGOLA) LDA
AND ALIASES; AND COMMERZBANK
AG NEW YORK BRANCH,

Respondents.

Case No. 15-cv-8652-LTS

**COMMERZBANK AG NEW YORK BRANCH'S BRIEF IN SUPPORT OF
RESPONDENT JPMORGAN CHASE BANK, N.A.'s OPPOSITION TO
PETITIONER'S MOTION FOR TURNOVER OF BLOCKED ASSETS**

On January 24, 2016, petitioner filed a petition for turnover against Commerzbank AG, New York Branch ("COBA") with respect to electronic funds transfers ("EFTs") held in certain accounts that COBA's New York branch has blocked pursuant to regulations promulgated by the Office of Foreign Assets Control ("OFAC") concerning the Fuerzas Armadas Revolucionarios de Colombia ("FARC"). On March 24, 2016, COBA filed a response to the petition for turnover. As of this date, petitioners have not filed any motion directed to COBA for turnover of the funds in the referenced accounts.

On June 29, 2016, petitioner filed a motion for turnover (the “Turnover Motion”) of two accounts held by JPMorgan Chase Bank (“JPMCB”). The Turnover Motion addresses whether funds that were received by a garnishee bank directly from a transmitting bank that is not subject to OFAC blocking regulations are available to petitioner for turnover pursuant to *Calderon-Cardona v. Bank of N.Y. Mellon*, 770 F.3d 993 (2d Cir. 2014) *cert. denied* 136 S. Ct. 893 (2016) (“*Calderon-Cardona*”), and *Hausler v. JPMorgan JPMCB Bank, N.A.*, 770 F.3d 207 (2d Cir. 2014).

This Court’s decision on the Turnover Motion with respect to this issue will govern in this proceeding with respect to the accounts blocked at COBA. In *Calderon-Cardona*, the Second Circuit held that:

an EFT blocked midstream is ‘property of a foreign state’ or ‘the property of an agency or instrumentality of such a state,’ subject to attachment under 28 U.S.C. § 1610(g), only where either the state itself or an agency or instrumentality thereof (such as a state-owned financial institution) transmitted the EFT directly to the bank where the EFT is held pursuant to the block.

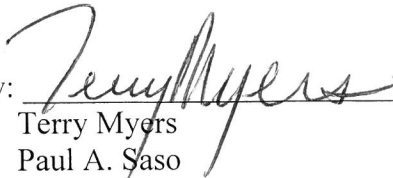
770 F.3d at 1002. Since Petitioner concedes that the subject funds blocked by JPMCB at issue were not transmitted directly from the FARC, or an agency or instrumentality of the FARC. (Turnover Motion (Docket Entry 176) at 4.), under *Calderon-Cardona*, these funds are not subject to attachment. Petitioner’s arguments that (1) the upstream wire transfer parties’ interests in the funds were temporary and have expired and (2) the upstream wire transfer parties have disclaimed any interest in the funds at issue, fail as a matter of law for the reasons set forth by JPMCB in its brief in opposition to the Turnover Motion.

Dated: New York, New York
July 29, 2016

GIBBONS P.C.

One Pennsylvania Plaza, 37th Floor
New York, New York 10119-3701
(212) 613-2000

Attorneys for Commerzbank AG, New York Branch

By: _____
Terry Myers
Paul A. Saso